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Measuring Effectiveness of Ombudsman Offices

Who watches the watchdog? While Ombudsman offices are actively engaged in drawing attention to administrative, social and even economic deficiencies, how do they keep themselves in shape? Who monitors them to keep them on their toes?

Presented by

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Today Alice has asked me to talk about measuring the effectiveness of Ombudsman offices. Of all the challenges that face Ombudsman, this question is one that I find particularly interesting.

Although Ombudsman around the world are by no means a homogenous lot — many of our offices have very different functions and very different processes, and operate in very different political, social and economic environments — all Ombudsman must, however, at some stage, ask themselves:

- are we working well?
- what are we achieving?

and, most importantly,

- could we do better?

Today I hope to stimulate some discussion by sharing some of the experiences of my office during the past 5 ½ years that I have been Ombudsman. I don't intend to cover this topic comprehensively, nor delve into the different ways that other offices answer these questions.

My talk will be about two discrete but complementary concepts of accountability. Firstly, external measures, through which we are publicly scrutinised and held to account. Secondly, internal measures, through which we ourselves determine how well we are performing our functions and where we might improve.

I just want to give you some background about our office, to set the scene.

I am the Ombudsman for the State of NSW in Australia. Australia is a federation, with three levels of government – federal, state and local. The country is made up of 8 States and Territories and there is an Ombudsman for each, as well as one to watch over the Federal public service.

The State of NSW has a population of approximately 6 ½ million people. We have jurisdiction over most organisations providing public services and a number of non-government agencies including those providing community services. In addition to handling complaints — over 36,000 in the last financial year — we have a very broad range of functions, including for example, oversight of the Police Complaints System, oversight over workplace child protection systems, a function to review agency decisions about freedom of information requests, the review of the deaths of children and certain people in care, and a function to audit the records of law enforcement agencies conducting undercover operations, to name a few.

During an investigation we have the power to require agencies to provide information and documents to us, and to answer questions. However, at the end of an investigation we only have the power to recommend that they change a decision or a system, or take steps to improve their operations. We have no coercive or determinative powers in this respect.

We also operate under strict confidentiality and secrecy provisions, and can only publish information about our work in limited circumstances.

Because we are legislatively required to operate largely behind closed doors, in some ways it is tempting to simply say to the public - '**trust us - we are the Ombudsman**' and let us simply go about our business.

I can understand how organisations can view the need to be accountable as somewhat inconvenient, taking up resources that could be spent elsewhere, and even exposing the organisation to the risk of external interference. However, after being Ombudsman for 5 ½ years I am strongly of the view that Ombudsman offices have a particular responsibility to justify what they do and why they do it.

Firstly, our reputation is critical to our effectiveness. We must therefore always be seen to be acting with the utmost integrity.

Secondly, we expect those agencies within our jurisdiction to make decisions and take actions according to principles of good conduct and administration. We should therefore expect no less of ourselves.

Finally, our very purpose is to serve the public and act in the public interest. The public has a right to expect that we will therefore be open to public scrutiny and willing to use feedback to improve the way we do our business. It is critical for our offices to maintain the confidence of both the agencies we investigate and the community at large, and be responsive to public expectations.

Externally, my office is held to account in three distinct ways.

- The first is our Parliamentary Committee, which was established for the specific purpose of overseeing our operations.
- The second is the array of watchdog agencies that have jurisdiction to scrutinise our conduct and actions. These include the State's anti-corruption agency and audit office, as well as agencies that handle complaints about privacy and discrimination issues, and those that enforce workplace safety laws.
- The third is that, like others in the public sector, we must comply with legislation and some government directives about organisational issues, we are currently required to prepare four separate annual reports (such as records and in addition there are requirements as to what records we must keep, the amount of energy that we use and the waste we generate).

Parliamentary Committee

I want to discuss the Parliamentary Committee in a little detail, because it is perhaps the most important accountability mechanism for my Office.

It was in fact the Ombudsman office that provided the impetus for the creation of our Parliamentary Committee. Prior to 1990, the Ombudsman essentially answered directly to the Premier. There was some tension in this arrangement given that on the one hand the Ombudsman was an independent officer of the Parliament and on the other, the Ombudsman was seen to report to the Premier, not only the head of government but also a Minister often responsible for the agencies the Ombudsman was charged with overseeing.

In 1990, my predecessor issued a report recommending the establishment of a Parliamentary Committee to oversee the functions of my office. His report included comprehensive recommendations relating to the role and functions of the proposed committee. The Ombudsman's recommendations were adopted by the legislature and in 1990 our Act was amended to allow for the creation of the committee.

It is interesting to note that only one other Ombudsman in Australia has a similar structure to oversee their operations.

In my view a Parliamentary Committee, along the lines of the model we have in operation is both an appropriate and effective external accountability mechanism. It comprises members from all political parties — it is not controlled by the government of the day — it works well to ensure our continued independence from the executive and makes us accountable directly to Parliament.

In practical terms, the committee holds a meeting with myself and my senior officers at least once a year. It is a public

forum. The media and members of the public are free to attend.

At those meetings, committee members ask us both questions on notice and without notice. At the start of each meeting, we take an oath or affirmation before giving evidence. I am usually given the opportunity to make an opening address and over the years I have used the address to raise those issues that I think are important and relevant and which will be of interest to the committee and public generally.

So what are the powers/responsibilities of the Committee? Firstly, the Committee has a power of veto over any person put forward to be appointed as the next Ombudsman. This is part of a rigorous process that must be followed for each appointment, and for any renewal of an appointment. Appointments are for 7 years and no-one so far has asked to be, or been renewed. I believe that the committee’s involvement and the openness of the process effectively contributes to the best person for the job being appointed, rather than someone too close to the government of the day.

The committee has the power to inquire into any aspect of the way we perform our functions, but not about the specific decisions that we make about individual complaints. However, there are a number of other ways that we are held to account for those decisions. I will come back to this later.

The committee also has a specific function of handling complaints from people who are unhappy with our processes. We are required to cooperate with any inquiries that the committee makes into these concerns.

We are more than prepared to do so, because if the concerns are legitimate, then it gives us an opportunity to use the feedback to improve our processes. I firmly believe that this approach makes us more effective as well as more accountable.

In fact, I believe that all of the ways in which we are held accountable can add value and make us more effective. Having to comply with various laws, government policies and service standards has forced us, as an organisation, to keep improving the way we do things, and to keep looking at ourselves critically to find ways to change for the better, to help us keep in step with the community for whom we work.

One example is requirements to do with our primary annual report. For each financial year, we must publish information about our financial situation, our management and structure, a summary review of our operations and much more.

Clearly the purpose of these requirements is to expose us to scrutiny by the public, but an important side benefit is that it gives us information about what we have done over a 12 month period, and we can then use this to compare our performance from year to year, and see where we are faring well and where we could improve.

Just like most of the agencies within our jurisdiction, we are a body that operates with public funds. Our reputation as being a leader in standards of service and in good administration generally, is critical to our effectiveness. It enables us to demonstrate our expertise when we are trying to persuade agencies within our jurisdiction to reconsider their decisions,

improve their systems, or take particular action to help an individual complainant.

I mentioned earlier that to avoid politicisation of and interference with our decision-making, our Parliamentary oversight committee is unable to look into individual matters, only at our operations. So how then do we convince people that our decisions are sound and not made arbitrarily? That our work is effective and properly focused?

Internal Measures

The first thing we do is provide comprehensive and understandable reasons for all of our operational decisions. We provide these reasons to both complainants and agencies.

The second thing we do is use our delegations carefully, making sure that only officers with appropriate experience and skills are able to make certain decisions in the first place. This helps to ensure that our decision-making will be of high standard.

However, everyone makes mistakes, and errors of judgment cannot be avoided 100% of the time. So, the third thing we do is have a policy of reviewing our decisions if a complainant is dissatisfied.

You would all be very familiar, I'm sure, with the reality of declining a large proportion of complaints, for a variety of reasons. These are usually the decisions that people dispute, believing that their matter warrants further attention.

When we receive a request to review a decision, we firstly try to get in touch with the complainant by telephone, to try to

explain our decision verbally. This gives us an opportunity to clarify any ambiguities about the decision or provide a better explanation of our reasoning. It also gives the complainant a chance to ask questions and go through their specific concerns one at a time. We have found that this approach has been particularly effective. In many cases we have not needed to review the decision as the complainant has been satisfied with the explanation. We encourage our staff to respond in this way if at all possible, rather than responding to the request in writing at the first instance.

If we do need to review the decision more formally, we guarantee that another member of staff, usually more senior to the original decision-maker, will review the complaint afresh.

We track the proportion of cases that people ask to be reviewed, as well as the proportion of those cases reviewed where we find that we have made the wrong decision. Both of these are a good measure of the quality of our decision-making and the quality of the way we communicate our reasons for those decisions. Obviously, we hope to reduce both over time.

The last two financial years are a good example of this. In 2003-2004, we were asked to review 4.2% of all cases we had finalised during the year. In 2004-2005 the rate went down to 3.1%.

In 2003-2004 we decided to re-open 6 % of the cases we reviewed, whereas in 2004-2005, we only felt the need to re-open 3% of the cases we reviewed.

Both these indicators give us information that our practices are improving the quality of our decision-making.

I have just been talking about cases where we have decided not to pursue the complaint, and how we measure the quality of those decisions. Now I want to talk those cases which we *have* decided to pursue. These are cases where we investigate, or take some other kind of action to try to find a resolution for a complainant or make some constructive suggestion to an agency.

We keep track of the rate at which our recommendations are accepted, and monitor their implementation.

We also keep track of the percentage of cases finalised where we have been able to achieve some kind of constructive outcome without needing to devote extensive resources to investigating. The kinds of outcomes that we count include the agency apologising or providing further information to the complainant, reviewing internal processes, reviewing a complainant's case, changing a policy or procedure, and taking disciplinary action against staff.

Again, we are able to compare what we achieve from year to year through these kinds of measures.

In addition to monitoring the outcomes of our work we need to look at the process side of our performance. In many ways, particularly for an office as busy as mine, it is equally important to keep track of process, because without effective workload processes — for example, if you have thousands of open files not being attended to — you cannot achieve any outcomes for anyone.

Last financial year my office processed over 35,000 new cases. They ranged from complicated complaints that needed to be investigated in detail, to simple telephone inquiries where we referred the complainant to another agency that could help them.

We were able to close more files than we opened, which is one of our performance indicators. This did not happen simply through the hard work of my staff, although certainly that plays a part. We have a number of strategies in place to monitor workflow and make sure that backlogs do not build up. For example:

- we set timeframes for finalising cases and closely supervising case officers to ensure that these timeframes are met,
- and we have strategies for dealing with older cases, including those complicated ones that need more time to handle and those where we are waiting for responses from external sources.

All of these measures in combination help us effectively monitor the progress of our work, keeping the workload moving and manageable.

Stepping back from looking at our work at such a micro level, we also monitor our work at a corporate level. We have adopted a continuous improvement approach to management. We regularly review our corporate and business plans and each of our business units hold annual planning days. This year we undertook program reviews of each of our discrete program areas to look at the functions and activities being performed in each team.

The reviews focussed on the time and resources devoted to each function and activity, the workloads of staff, backlogs of work, measurement of performance and outcomes, and management structures.

We recognise the importance of staff satisfaction in making us effective and therefore we actively encourage staff to suggest ways that we can improve our practices.

This year we conducted a workplace climate survey asking all staff to give confidential feedback on their perceptions of the office and to identify areas where they believe change should be made. The survey addressed issues such as leadership, communication, equity, career opportunities and participation in decision-making.

We also take all external complaints about our service seriously and try to address legitimate concerns. From time to time we conduct complainant surveys to measure satisfaction with our service.

All of these activities are aimed at gathering feedback about our work so that we can use that information to better understand how well we are performing, and where we might improve.

Conclusion

In conclusion, changes to our jurisdiction, changes to community expectations, changes to the world in which we operate....all of these drive the need for Ombudsman to look continually at their effectiveness and to prioritise the need to regularly identify better ways to use our limited resources. In my view it is critical to the viability of all Ombudsman to keep a close eye on internal systems and practices, as well as to openly and honestly publicly demonstrate their value to the community at large.

It is no longer enough to say – ‘*I’m the Ombudsman, trust me*’. The public expects more and so in my view, should an effective Ombudsman. If we perform our functions to the best of our ability, and demonstrate our effectiveness to all stakeholders, we have absolutely nothing to fear from formal structures to hold us accountable.

I hope that in sharing some of the external and internal accountability mechanisms of my Office, I have provided the opportunity for some broader discussion on this very important issue.